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THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY
COMPANY, a Corporation,

Plaintiff,

v.

PENNY NEWMAN GRAIN
COMPANY; and Roes 1-5, inclusive,

Defendants

CASE NO. CIV - 05-0105 AWI SMS

**STIPULATION TO CONTINUE
DATE FOR RESPONSE TO
COMPLAINT PENDING
EXECUTION OF SETTLEMENT
DOCUMENTS AND PAYMENT OF
SETTLEMENT AMOUNT**

ORDER

Trial date: None

TO THE HON. ANTHONY W. ISHII, UNITED STATES DISTRICT JUDGE:

WHEREAS, Plaintiff BNSF Railway Company (suing herein under its former name, The Burlington Northern and Santa Fe Railway Company) (hereafter "BNSF") and Penny Newman Grain Company ("Penny Newman") have reached a settlement of this case in its entirety which has yet been reduced to a formal writing;

WHEREAS BNSF wishes for this Court to retain jurisdiction over this matter until such time as the parties have memorialized the settlement and until such time as the settlement disbursement has been made;

1 WHEREAS Penny Newman has not yet filed its responsive pleading in this action
2 due to various continuances granted by this Court while good faith settlement discussions
3 were underway;

4 WHEREAS the parties anticipate that it will take less than thirty days to
5 memorialize the settlement but in an abundance of caution have built some addition time
6 into this agreement for the Court to retain jurisdiction over this matter;

7 NOW THEREFORE, the parties hereby do stipulate and agree that Penny Newman
8 shall have to and including July 20, 3005 to file its responsive pleading in this matter and
9 that once the documents memorializing the settlement are signed and the settlement
10 disbursement made from Penny Newman to BNSF, BNSF will dismiss this action with
11 prejudice.

12 Dated: May 20, 2005

LAW OFFICES OF
LESLIE G. MCMURRAY

/s/ Leslie McMurray

Counsel for BNSF

15 Dated: May 20, 2005

LAW OFFICES OF MCCORMICK,
BARSTOW, SHEPPARD, WAYTE &
CARRUTH, LLP

/s/ Kenneth Baldwin

Counsel for PENNY NEWMAN

20 **ORDER OF THE COURT**

21 In consideration of the above stated stipulation and good cause appearing
22 therefore, Defendant Penny Newman Grain Company shall answer, object, or otherwise
23 respond to the Complaint by July 20, 2005. Once the settlement is memorialized and the
24 settlement disbursement received by BNSF, BNSF shall file a Request for Dismissal of
the entire action.

25 IT IS SO ORDERED.

26 Dated: May 23, 2005
27 0m8i78

/s/ Anthony W. Ishii
UNITED STATES DISTRICT JUDGE